



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9433788

Date: SEPT. 29, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an electrical power network communications engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

A. Substantial Merit and National Importance of the Proposed Endeavor

With respect to his proposed endeavor, the Petitioner indicated that he intends to "strengthen the U.S. power grid by creating a huge national interconnected energy system." He asserted that he plans "to develop and implement reliable coast-to-coast interconnection, as well as north-to-south, to ensure that, in case of severe events and unexpected outage situations, the power grid withstands the adverse conditions, quickly changing energy flows according to a huge net of smart transmission facilities."⁴ The Petitioner further explained:

All the three America's electric grid (Eastern, Western and Texas Interconnection) shall be interconnected in a ring structure, allowing energy flows in any direction needed. Regional systems will be completely remodeled to create a multiple points' choice for receiving energy from any direction. A main bus transmission should be designed with reinforced structures and superconductors to keep the supply of energy and communication for the main safety and business centers even in a very extreme situation. Added to a most reliable and resilient structure, new projects all over the country will complete system overall robustness and allow total real-time control and automatic corrections to ensure the best service for customers.

The record includes articles about electric power transmission, the Trump Administration's energy policy, the spending required to maintain our country's electric grid, U.S. Department of Energy Electric Transmission Corridor designations, the 2017 power outage at Atlanta's Hartsfield-Jackson airport, and electrical outages attributable to a January 2018 winter storm along the U.S. East Coast. The Petitioner also submitted a report from the Edison Electric Institute discussing U.S. electric service transmission projects and a copy of the U.S. Energy Policy Act of 2005. This documentation supports the Director's determination that the Petitioner's proposed endeavor aimed at redesigning the

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ Regarding his prospective work in the United States, the Petitioner provided email exchanges with staff at [REDACTED] (an electrical alternating current substation projects company) and [REDACTED] (an engineering, consulting, and environmental services firm) relating to potential job opportunities. As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about these prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

U.S. power transmission grid has substantial merit and national importance. Accordingly, we agree with the Director that the Petitioner meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his academic credentials, résumé, engineering license, communications with two U.S. employers relating to future job opportunities, and Brazilian energy transmission projects. He also offered an article from CanalEnergia.com.br about a transmission auction and letters of support discussing his work experience.

The Petitioner contends on appeal that his education, experience with the [redacted] company [redacted], involvement in energy transmission projects, letters of support from professional colleagues, communications with U.S. employers, and plan for future activities indicate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the evidence is insufficient to demonstrate that he is well positioned to advance his endeavor to redesign the U.S. power transmission grid under *Dhanasar*'s second prong.

In letters supporting the petition, several of the Petitioner's references discussed his prior experience involving [redacted] energy transmission projects. For example, [redacted] professor of electrical engineering at [redacted] University, indicated that "[s]ince 2004, [the Petitioner] has been an electrical power systems engineer" and that he "is responsible for designing and developing power infrastructures." [redacted] further stated that the Petitioner "has focused his efforts on high voltage [redacted] installations at more than 75 facilities" in [redacted] but he does not explain how the Petitioner's transmission projects in [redacted] constitute a record of success in developing a "national interconnected energy system."

Furthermore, [redacted] human resources manager with [redacted] indicated that the Petitioner has worked for the company since 2004 and that his current responsibilities as commercial superintendent include "participating on engineering solutions and planning of contractual activities," "personal technical responsibility of the projects in execution by the company," and "prospecting partnerships in capturing new customers." [redacted] also noted that his work involves "elaboration of budgets and proposals for new ventures," "technical-commercial discussions and negotiations," "closing of agreements and contracts," and "internal disclosures and monitoring of contractual goals and targets," but she did not provide examples of how the Petitioner's work has had a significant effect beyond [redacted]'s transmission projects or otherwise renders him well positioned to redesign the U.S. power transmission grid.

In addition, [redacted] [redacted] Sales and Tendering Director for [redacted] a subsidiary of [redacted] explained that he and the Petitioner have worked "together, not only as competitors, but as partners on important projects in [redacted]" Regarding their power transmission contract discussions, [redacted] stated: "[The Petitioner] adds to negotiations details and expertise that over-attend clients' expectations. Some real examples he gives about similar situations he passed before, and bringing this to the current discussions, elevates negotiations to a higher level not common to be seen." While [redacted] is complimentary of the Petitioner's technical knowledge and negotiation skills, the record does not include sufficient information or

evidence demonstrating that the Petitioner was mainly responsible for devising a national interconnected energy system in [] that his work has served as an impetus for progress or generated positive discourse in his field, or that his power transmission projects otherwise represent a record of success or progress rendering him well positioned to advance his proposed endeavor.

With respect to the Petitioner's involvement on behalf of [] to obtain contracts from the [] Government, [] Sales Director with [] a company that manufactures electric components and equipment, discussed a 2017 auction in which [] received contracts for "more than 35,000 km of transmission lines and 14 substations, signed in different lots with a French group, an Indian concessionaire, and a Spanish investor."⁵ [] asserted that the Petitioner's work for [] has included contracts for "four direct current transmission lines bipoles 600 kV and 800 kV built in the last eight years in [] Several substation projects were implemented too, 500 kV, 230 kV, and 138 kV, some of them in consortium with very reputed companies as []" Likewise, [] Commercial and Marketing Director with [] a producer of steel structures for generation and transmission of electric power, contended that the Petitioner has "succeed[ed] in many important negotiations over the last years. He has been leading [] into the biggest energy transmission contracts in [] and he has confirmed his position in this sector. For many of them, [] has supplied steel structures, as a contractor or in consortium with []" While the Petitioner has earned the admiration of those who have partnered with him on transmission line projects, their statements alone do not reflect a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong. Nor has the Petitioner adequately demonstrated that his work has served as an impetus for progress in the engineering field, has generated substantial positive discourse in the power transmission industry, or otherwise constitutes a record of success or progress in devising a national interconnected energy system.

Regarding the Petitioner's email exchanges with staff at [] and [] reflecting his interest in working for these companies, the communications do not offer adequate information to establish whether his proposed work on their behalf involves devising a national interconnected energy system for the United States.⁶ Without sufficient evidence demonstrating the means or financial support to undertake his proposed endeavor to develop coast-to-coast electrical grid interconnection in our country, the Petitioner has not shown that his plan for future activities renders him well positioned to advance his endeavor. Moreover, as it relates to his plan for future activities, the record does not include support from organizations such as the U.S. Federal Energy Regulatory Commission or North American Electric Reliability Corporation regarding his particular proposal to remodel U.S. transmission systems and interconnect regional electric grids in a national ring structure.

Additionally, the Petitioner presented his engineering license issued by the Regional Board of Engineering and Agronomy in [] but he has not shown that this professional license represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his

⁵ [] indicated that he has worked with the Petitioner on multiple transmission projects in []

⁶ For example, the [] email mentioned a position in the company's "International Operations and Construction department," but did not identify the specific work to be performed by the Petitioner. Similarly, the [] email stated: "We are currently exploring projects with new clients in the southern United States, where we do not have qualified personnel. If work develops, we would consider employing you part or full time." Again, the Petitioner's specific undertaking is not identified. Neither email indicated that the Petitioner will serve in a capacity allowing him to redesign the U.S. power transmission grid.

endeavor in the United States. Further, as it relates to the Petitioner's education, while his Network Communication Engineering degree from University [REDACTED] renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor.⁷ We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor, and education and licensures are merely two factors among many that may contribute to such a finding.

Finally, the Petitioner submitted a [REDACTED] 2016 article from CanalEnergia.com.br, entitled [REDACTED]"⁸ This article includes a brief quote from the Petitioner commenting on whether Annual Permitted Revenues would attract new investors in the next auction, but it is not sufficient to demonstrate a record of success of, or interest in, his work.

As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor to redesign the U.S. power transmission grid, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, experience in his specialty, the importance of his field, and the impracticality of labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁷ In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering." *Id.* at 891.

⁸ The record does not include readership statistics for CanalEnergia.com.br or documentation of the portal's significance in the Petitioner's field.